IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8717 OF 2003

Balkrishna Shivaji Patil & ors.... Petitioners

versus

The State of Maharashtra & ors. .. Respondents.

Shri S.D. Thokade for the petitioners.
Shri S.R.Nargolkar AGP for Respondents 1 to 5.
Shri Vijay Patil for Respondent no.6.

CORAM; V.G. PALSHIKAR &
V.R. KINGAONKAR, JJ.
DATED; FEBRUARY 28, 2006.

JUDGMENT: **(Per Palshikar, J.)**

1. By this petition, the petitioners have challenged the issuance of Notification under section 4 of Land Acquisition Act 1984.

2. The prayers made by the petitioners are liable to be noted as under:

a) Rule be issued and record and proceedings may be called for;

b) This Hon'ble court may be pleased to issue a writ of Mandamus, certiorari or any other appropriate writ or directions against the respondents:

i) To proceed with further acquisition proceedings from Notification/notice under section 9 dated 6-5-1999 and declare the Award under section 11 of the Land Acquisition Act in respect of the lands of village Mahagaon as notified under Notification issued under section 4 dated 12-2-1998 and not to treat the said acquisition proceedings as being lapsed;

ii) To quash and set aside/cancel the fresh Notification dated 14-2-2002 issued under section 4 and all further proceedings under section 6 and 9 held on the basis of said section 4 Notification, as being illegal, improper as the previous acquisition proceedings based on Notification dated 12-2-1998 issued under section 4 and reached upto stage of section 9 being legal, proper and not lapsed;

iii) Alternatively, to accept and

base the measurement and valuation which has been done by the respondent no. 5 vide his report no. 3037, dated 19-4-1999, and pass the Award on the basis of said valuation report only;

c) Pending the hearing and final disposal of this writ petition, the repondents may be restrained by and order of injunction from taking any action for revaluation and passing the Award on the basis of the fresh notification issued under section 4 dated 14-2-2002, in respect of the lands in question of village Mahagaon, Taluka Barshi, District Solapur:

d) This writ petition may be allowed with costs throughout:

e) Such other just, equitable and proper orders may be passed in favour of the petitioners;

3. Having heard the learned counsel for the petitioner

at length, we are of the view that the petition deserves to be dismissed as none of the prayers can be granted under any of the provisions of law. Our reasons for so dismissing the petition are as under

4. On 12-2-1998 the Government of Maharashtra issued Notification under section 4(1) of the Land Acquisition Act 1894 (hereinafter referred to as the act) proposing likelihood of acquisition of land in villages Mahagaon, Bavi, Tandulwadi, Chikharde and Pimpalagaon. This Notification was followed under enquiry under section 5A of the Act, publication of the notice under section 6 of the Act and ultimately no Award was passed and therefore the first prayer that the respondent State be directed to declare the Award under section 11 of the Act, cannot be accepted in law as section 11A of the Act mandates that if Award under section 11 is not passed within two years of the Notification under section 6 of the Act, the Notification proceedings for acquisition lapse. Factually no such Award was passed is an admitted position. It also cannot be disputed if certainly was not passed within two years of the Notification. The law therefore operated and the proceedings were visiated and were required to be dropped by operation of section 11A. In such circumstances prayer (b)(i) as made by the petitioner cannot be accepted.

5. Thereafter fresh Notification was issued under section 4 of the Act on 14-2-2002 declaring possibility of acquisition of land in Mahagaon village. This Notification was followed by section 5 of the enquiry and issuance of section 6 of Notification. This proceedings are going on. As will be seen from the affidavit filed by the State, it is specifically contended in the reply affidavit that the provisions of Land Acquisition Act followed while determining the compensation in fresh acquisition. It is pertinent to note that earlier acquisition was of the year 1998. For the land sought to be acquired, would have payable in the year 1998. Now by commencing fresh acquisition in the year 2002 the amount of compensation payable would be of the year 2002. Taking into consideration the value of immovable property, it is obvious that it would be more than what it could have been earlier. However, this consideration is not relevant for the purposes of this petition as the mandate of section 11A has operated and the previous proceedings stand quashed. It is therefore not possible to quash the fresh acquisition proceedings particularly when no satisfactory reasons are coming forward for such quashing. Prayer(b)(ii) also therefore deserves to be rejected.

6. Alternative prayer in the face of legal position cannot be accepted and the compensation will have to be determined as required by the provisions of the Act and not depending on valuation report made in earlier acquisition proceedings.

7. Prayer (c) was for interim relief which has worked out itself. Prayers (d) and (e) are ancilliary prayers and require no adjudication.

8. In our opinion, therefore, there is no substance in this petition and the same deserves to be dismissed and accordingly dismissed with cost of Rs. 500/-.

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